

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

WAYNE B. LYNCH, Administrator)	
of the Estate of DONOVON W. LYNCH,)	
Deceased,)	
)	Case No. 2:21-cv-341
Plaintiff,)	
)	
v.)	
)	
SOLOMON D. SIMMONS, III, et al.,)	
)	
Defendants.)	

MOTION TO SUBSTITUTE ATTORNEY

Mr. Wayne B. Lynch, as Administrator of the Estate of Donovan W. Lynch, and pursuant to Local Rule 83.1, moves this Court to substitute its counsel from Thomas B. Martin and Justin Fairfax to Joseph V. Sherman, Esq., of Joseph V. Sherman, P.C., and in support states that:

1. Mr. Lynch filed his Complaint in this Court on June 21, 2021. Dkt. 1.
2. On June 7, 2022, this Court entered an Order denying the City's Motion to Dismiss, Dkt. 28, and set this matter for trial on April 4, 2023. Dkt. 33.
3. In August and September of 2022, the parties litigated production of documents from Mr. Jeffrey Reichert, Esq., in response to subpoenas issued by the Defendants. Dkt. 40-45.
4. During that time an irreconcilable dispute arose among Mr. Lynch and his attorneys regarding trial strategy. Mr. Lynch's attorneys moved to withdraw, Dkt. 46-47.
5. Messrs. Justin Fairfax and Tom Martin substituted as counsel of record. Dkt. 47.
6. Current counsel, Mr. Fairfax and Mr. Martin, took the case with express knowledge and understanding regarding Mr. Reichert's role as attorney in fact of the Estate. Dkt. 56-2, p. 1. The Court and parties confirmed Mr. Reichert's involvement. Dkt. 57.

7. On or about December 8, 2022, the parties mediated and settled this case.
8. The parties agreed to execute a formal settlement agreement within seven (7) business days of City Council approval of the settlement. Dk. 77, para. 8.
9. On December 13, 2022, the City of Virginia Beach City Council held a meeting.
10. On December 19, 2022, the parties filed a Notice of Settlement. Dkt. 74.
11. On December 20, 2022, the City sent a draft of a proposed settlement agreement.
12. On December 20, 2022, Mr. Martin forwarded a copy of the proposed settlement agreement to his client, the Estate of Donovan Lynch, via emails to Mr. Reichert and Mr. Lynch.
13. On December 20, 2022, Mr. Reichert returned a redlined version to Mr. Martin.
14. On December 21, 2022, the Court accepted the notice of settlement, Dkt. 74, and required submission of a stipulated settlement agreement by December 23, 2022. Dkt. 75.
15. On December 21, 2022, Mr. Martin counseled the Estate on the proposed redline changes submitted by Mr. Reichert. Mr. Martin welcomed any response from Mr. Reichert.
16. On December 22, 2022, at 10:16 a.m., Mr. Reichert returned a second revised version of the settlement agreement incorporating the advice from Mr. Martin related to specific changes while still improving the settlement documents to protect the interests of the Estate.
17. On December 22, 2022, at 11:51 a.m., Mr. Fairfax advised the Estate not to seek any changes to the proposed settlement agreement provided by the City. Mr. Fairfax advised he may act independent of the Estate's interests if the Estate proposed any edits to the agreement.
18. At 12:17 p.m., Mr. Reichert asked Mr. Fairfax to propose the edits to the City. At 2:50 p.m., Mr. Fairfax reiterated his lack of interest in negotiating settlement terms for the Estate. At 3:44 p.m. Mr. Reichert and Mr. Lynch both instructed Mr. Fairfax to negotiate the terms and attached an executed version of the second revised agreement for the City's use in execution.

19. On December 23, 2022, at 3:26 p.m., Mr. Martin forwarded, to the Estate, a 3:13 p.m. e-mail from the City. The substance of the communication appears to show Mr. Fairfax and Mr. Martin sent a copy of the December 20 redlined version to the City for consideration – not the executed second revised agreement from December 22. The City accepted certain edits from the December 20 redlined version, rejected the rest, and asked for execution by close of business.

20. On December 23, 2022, Mr. Fairfax filed a Joint Motion to Enforce Settlement Agreement, purportedly on behalf of the Estate, representing to the Court that the parties “drafted and negotiated” an agreement and “Mr. Reichert is preventing ... settlement.” Dkt. 76.

21. In fact, Mr. Fairfax obstructed negotiation of terms of the settlement agreement.

22. On December 26, 2022, the Estate terminated its relationship with Mr. Fairfax.

23. On December 27, 2022, the Estate hired Mr. Sherman to represent its interests.

24. Substitution of counsel promotes the resolution of this matter. Withdraw of Mr. Fairfax and Mr. Martin will not cause material adverse effects on the interests of the Estate.

The Estate respectfully requests that the Court enter an Order permitting substitution of counsel of record for Plaintiff. A proposed order is attached as Exhibit A to this filing.

December 28, 2022

**WAYNE B. LYNCH, ADMINISTRATOR OF
THE ESTATE OF DONOVON W. LYNCH,
DECEASED**

By: /s/ Joseph V. Sherman
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CERTIFICATE OF SERVICE

I certify that on Wednesday, December 28, 2022, I electronically filed a true copy of the foregoing MOTION TO SUBSTITUTE ATTORNEY with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record including:

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/s/ Joseph V. Sherman

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